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Question of the Falkland Islands (Malvinas)

Letter dated 13 August 2014 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General

I have the honour to write to you on instructions from my Government in order to transmit herewith a reply to the letter dated 10 February 2014 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations (A/68/747), which in turn responded to the letter of 3 January 2014 sent by Argentina (A/68/698).

The Argentine Republic once again expresses its regret that the United Kingdom of Great Britain and Northern Ireland has continued to misrepresent historical facts in a clear attempt to conceal the act of usurpation it committed in 1833; this act has, since the moment the British invaded, been the subject of continuing and repeated protests by Argentina.

Reaffirming the Argentine Republic's legitimate sovereignty rights over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas, I should be grateful if you would have this letter circulated as a document of the General Assembly under agenda item 44, concerning the question of the Malvinas Islands.

The Argentine Republic rejects each and every one of the claims contained in the aforementioned British reply, considering them mistaken and contradictory. It reiterates the numerous, solid and irrefutable historical arguments that it set out in the annex to its letter of 3 January 2014 (A/68/698) and, before that, in its letters of 3 January 2013 (A/67/688), 9 April 2013 (A/67/832) and 9 August 2013 (A/67/954), in addition to various related communications whose content it hereby reaffirms.

The Argentine Republic once again expresses its regret that the British Government has continued to misrepresent historical facts in a clear attempt to conceal the act of usurpation it committed in 1833; this act has, since the moment the British invaded, been the subject of continuing and repeated protests by Argentina.

Instead of distorting and falsifying historical events which it has acknowledged and whose consequences it also understands, the United Kingdom should respect the call of the General Assembly for a solution to the sovereignty

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dispute and immediately resume negotiations with Argentina on sovereignty over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas in order to find a just and definitive solution to the dispute. In so doing, it would be acting with the same lawfulness and responsibility that it demands of the rest of the international community from its privileged position in the United Nations.

Argentina recognizes the principle of the self-determination of peoples, under General Assembly resolution 1514 (XV), in relation to peoples subjected to alien subjugation, domination and exploitation. As that characterization does not apply to the question of the Malvinas Islands, this question has been defined as a "special and particular" case of decolonization involving a sovereignty dispute between Argentina and the United Kingdom that must be resolved in a peaceful and negotiated manner, taking due account of the "interests" of the inhabitants of the Islands.

In contrast, the United Kingdom has a questionable and contradictory voting record in the General Assembly on questions of colonialism and self-determination. It is worth recalling the statement made by the Minister for Foreign Affairs, Héctor Timerman, before the Special Committee on decolonization at its meeting of 20 June 2013, in which he pointed out that, with regard to the 15 territories currently on the Committee's agenda other than Gibraltar and the Malvinas, the United Kingdom had not supported 88 per cent of the resolutions adopted by the General Assembly. Argentina, on the other hand, had supported 81 per cent of those resolutions. As regards the eight cases in which the United Kingdom is the colonial Power — again excluding Gibraltar and the Malvinas — the United Kingdom failed to support 90 per cent of the relevant resolutions, whereas Argentina supported 80 per cent.

Lastly, the United Kingdom has never supported a resolution adopted by the General Assembly on recommendation of the Special Committee regarding former British colonial territories that are now independent countries and members of the Committee. Argentina has never voted against such a resolution.

As regards the transplanted nature of the islands' inhabitants, the Argentine Government can only reaffirm that the inhabitants are British subjects who have stayed on the islands under the protection of a strict migratory policy that has, in general, discriminated systematically against mainland Argentines.

The British letter also refers to the vote that was unilaterally held by the United Kingdom for the inhabitants which that country implanted in the Malvinas Islands. The vote was intended to ask the inhabitants about questions that gloss over the true legal status of the Islands. It is surprising that the United Kingdom should boast about the results of a so-called "referendum" whose predictable outcome, while it confirms that the subjects in question are British, does not modify the colonial nature of the issue and cannot bring an end to the dispute. This was effectively a unilateral British act and therefore a violation of General Assembly resolution 31/49. That is clearly why the vote was not attended by "international observers", whom British diplomats sought out in vain, but rather by a handful of individuals acting in their personal capacity. Nor was the illegitimate vote recognized in any way by the United Nations or other organizations; indeed, it was rejected by numerous and varied countries and regional forums, including the

Southern Common Market (MERCOSUR), the Union of South American Nations (UNASUR) and the Bolivarian Alliance for the Peoples of Our America (ALBA).

As the Argentine Republic has aptly stated, it is thus the United Kingdom that is departing from the principles of the Charter of the United Nations, since Argentina continually calls on the United Kingdom to cease its efforts to disrupt Argentina's territorial integrity and to agree to comply with the letter of the Charter and, in particular, the requirement that every member of the international community should settle its disputes by peaceful means.

These exchanges of letters merely demonstrate that the dispute exists, that it is ongoing and that it therefore requires a negotiated settlement between Argentina and the United Kingdom in accordance with the United Nations mandate and with the international community's numerous urgings.

The manner in which the United Kingdom selectively cites statements by international and regional forums, in an attempt to support a purported right to self-determination, is telling. In that regard, it is worth recalling once again that the United Nations General Assembly has explicitly denied that the principle of self-determination applies to the question of the Malvinas Islands, given the characteristics that make it a "special and particular" colonial situation. It bears repeating that in 1985, in a decision that removed any doubt regarding the issue, the General Assembly rejected two British attempts to amend the draft resolution on the question of the Malvinas Islands by including a reference to the principle of self-determination. Owing to the specific nature of the case, none of the General Assembly resolutions on the question accepts, states or assumes that the principle of self-determination can apply. To be clear, these are the same resolutions invoked by other organizations, such as the Organization of American States in its regional declarations, not to mention other regional and bi-regional forums which — although the United Kingdom fails to mention it — have expressed firm support for the legitimate rights of Argentina in the sovereignty dispute regarding the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas.

It is also false for the United Kingdom to state that the events of 1982 are the only reason for its military presence in the Malvinas. It is worth recalling once again the military actions of 1833, which were referred to in the letter of 3 January 2014 (A/68/698) and should be understood in the context of the imperialist policy of the United Kingdom throughout the nineteenth century, in the American continent as well as in Africa and Asia. Moreover, in 1834, the year of the usurpation, the British Government permanently stationed a naval officer on the Islands. Indeed, it is common knowledge that British forces and military facilities in the Malvinas were involved inter alia in the events of the First and Second World Wars, such as the "Battle of the Malvinas" of 8 December 1914 and the manoeuvres to close in on and attack the German cruiser *Admiral Graf Spee* on 13 December 1939.

The United Kingdom justifies its significant military presence in the South Atlantic on the grounds that it is "entirely defensive" in nature. However, since the return of democracy in 1983, no reasonable observer of political and military realities in the South Atlantic could seriously argue that Argentina constitutes a military threat or that its posture has been such as to justify the militarization espoused by the United Kingdom, which is taking various unilateral measures of a hostile nature that do in fact constitute a threat to the security of the region. The

region has unanimously rejected the British military presence in the South Atlantic and has expressed concern about the above-mentioned unilateral activities through a variety of pronouncements by the MERCOSUR States parties and associated States, UNASUR and the Community of Latin American and Caribbean States, and at the Ibero-American Summits and meetings of the States members of the zone of peace and cooperation of the South Atlantic.

The Argentine Government once again expresses its regret that the United Kingdom has continued to irresponsibly create expectations among the inhabitants of the Islands based on the illicit appropriation of Argentine natural resources, thereby openly violating international law and contravening the statements of international organizations, particularly General Assembly resolution 31/49 referred to above. At the same time, the United Kingdom ignores the fact that the interests of those inhabitants and their way of life are adequately protected by the relevant resolutions of the Assembly and by the Constitution of the Argentine Republic, respectively.

The Argentine Republic affirms that the colonial so-called "government" of the Islands has never participated as such in bilateral meetings, despite the United Kingdom's claim to the contrary. There have always been no more than two parties seated across from one another at the table, which has only two sides. Some inhabitants of the Islands have participated in bilateral meetings with Argentina, but only as part of the British delegation, and the United Kingdom never expressed any objections or demands regarding that situation. The arrangement goes back to the 1970s and is fully consistent not only with the mandate determined by the international community (namely, the bilateral nature of the issue and respect for their interests), but also with the fact that, in the final analysis, the individuals in question are British citizens authorized to live on the Islands under the migratory policy described above.

The Argentine Government reiterates its concern at the United Kingdom's persistence in conducting unilateral activities in the disputed area, in violation of General Assembly resolution 31/49. In the same way, it rejects the alleged validity and legitimacy of the United Kingdom's decisions, which it attributes to a purported "government" of the Malvinas, to grant unlawful licences for fishing and the exploration of hydrocarbon reserves in the waters of the Malvinas.

The Argentine Government rejects the United Kingdom's contention that Argentina supposedly "walked away" or "withdrew" from cooperation with the United Kingdom on various issues connected with the South Atlantic. Rather, Britain's unilateral acts prevented the continuation of bilateral cooperation on the relevant issues. The Argentine Government did not "walk away from" the South Atlantic Fisheries Commission in 2005. As the United Nations was duly informed (A/60/594), the Argentine Government proposed to the British Government, on 27 October 2005, that the South Atlantic Fisheries Commission should hold its twenty-eighth meeting. The meeting was held on Tuesday, 6 December 2005. However, the British delegation did not agree to adopt the agenda proposed by the Argentine delegation, which contemplated an examination of the mandate of the Commission and the extent to which it had been affected by a prolonged series of British unilateral measures.

Bilateral cooperation on fisheries issues in the South Atlantic was effectively prevented by successive unilateral acts by the United Kingdom, such as the

establishment of alleged maritime jurisdictions around the Malvinas Islands in 1986 and 1990, and around the South Georgia Islands and South Sandwich Islands in 1993; the sale of unlawful fishing licences since 1987; the unilateral lifting in 1994 of the temporary total prohibition of fishing in the area defined in the annex to the Joint Statement of 28 November 1990 and in the area to the west of that area; and the establishment in 2005 of a quota system for fisheries resources in the waters surrounding the Malvinas Islands, a measure that constitutes a form of unlawful and unilateral long-term disposition of fisheries resources in maritime areas under dispute.

The Argentine Republic recalls that the decision taken in 2007 to terminate the Joint Declaration on Cooperation over Offshore Activities in the South West Atlantic was attributable to repeated unilateral activities by the United Kingdom that ran counter to the aforementioned Declaration, and that it was taken following a period of reflection that began when both countries acknowledged the existence of a dispute relating to the interpretation of the geographical area to which the Declaration applied.

The Argentine Republic again made clear its firm desire for cooperation when, in 2007, it communicated the following decision to the United Kingdom: "It was the intention of the Argentine Government to transmit to the British Government the conclusions reached in relation to this instrument at the diplomatic meeting proposed by Argentina in February 2006 to address the status of all understandings agreed between our two countries" under the formula on sovereignty. "Regrettably, however, that was not possible because of your Government's refusal to hold that meeting" (A/61/827).

Similarly, it should be pointed out that the decision of the Argentine Government to terminate the Argentine-British Joint Declaration was supported by the Heads of State of the South American Community of Nations through the presidential statement on the Malvinas Islands adopted at the First Energy Summit, which was held in Isla Margarita, Venezuela, on 17 April 2007.

As regards the United Kingdom's statements rejecting the adoption of Law No. 26,915, the Argentine Republic reiterates that the measures taken in the context of its domestic jurisdiction address the need to protect the renewable and non-renewable resources that the United Kingdom seeks to exploit. It is therefore legitimate and reasonable that Argentina should continue to take measures aimed at discouraging unlawful unilateral activities. The said measures have been taken by the Argentine Republic in exercise of its sovereign rights and in conformity with international law.

For their part, the Heads of State and Government of the MERCOSUR States parties and associated States have recognized the right of the Argentine Republic to take legal actions under its legislation against the unauthorized exploration and exploitation of hydrocarbons in the disputed area. On 29 November 2013, the Ministers of Energy of the States members of the Latin American Energy Organization took the same position and, moreover, took note of the decisions taken by the Department of Energy of Argentina in respect of companies involved in such illicit actions.

Lastly, the Argentine Government wishes to reiterate that the United Kingdom specifically recognized the existence of the sovereignty dispute at the twenty-fourth

session of the Commission on the Limits of the Continental Shelf, held at United Nations Headquarters in 2009. On that occasion, the Commission stated that, in accordance with its rules of procedure, it was not in a position to consider and qualify those parts of the submission that were subject to dispute (CLCS/64).

The Argentine Republic reaffirms its imprescriptible sovereignty rights over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas.